

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of)
3) MUR 7217
4 Merrie Lee Soules)
5 Soules for US Congress and Laura Garcia)
6 in her official capacity as treasurer)
7 Aero Newton, Inc.)
8 Aero Flight Club of Las Cruces, Inc.)
9 Brent Shelley)

10 **SECOND GENERAL COUNSEL'S REPORT**

11 **I. ACTIONS RECOMMENDED**

12 We recommend that the Commission: (1) take no further action as to Soules for US
13 Congress and Laura Garcia in her official capacity as treasurer (the "Committee") and Merrie
14 Lee Soules; (2) send letters of caution to the Committee and Soules; and (3) close the file as to
15 all Respondents.

16 **II. BACKGROUND**

17 Soules was a House candidate in the Second Congressional District of New Mexico
18 during the 2016 election cycle, and the Committee was her principal campaign committee.¹ On
19 April 24, 2018, the Commission found reason to believe that Soules and the Committee violated
20 52 U.S.C. § 30114(c)(2) and 11 C.F.R. §§ 100.93(c)(2) and 113.5(b) by accepting campaign-
21 related non-commercial air travel.² Because the source of the air travel was not clear, the
22 Commission took no action at that time as to the other Respondents, Aero Newton, Inc. ("Aero
23 Newton"), Aero Flight Club of Las Cruces, Inc. (the "Club"), and the pilot, Brent Shelley.

24 The Office of General Counsel conducted an investigation to determine the source and
25 value of the travel. Based on the results of the investigation, we recommend that the
26 Commission take no further action except to issue letters of caution to Soules and the Committee

¹ Statement of Organization, Soules for US Congress (Feb. 1, 2016).

² Certification, MUR 7212 (Soules for US Congress, *et al.*) (Apr. 25, 2018).

1 regarding the prohibition on non-commercial air travel by House candidates. We also
2 recommend that the Commission close the file as to all Respondents.

3 **III. SUMMARY OF INVESTIGATION**

4 The investigation confirmed that Soules traveled on board a single-propeller-engine
5 Cessna Model 182H, which is owned by Aero Newton and leased exclusively to the Club for use
6 by its members, in connection with Soules's 2016 campaign.³ At the time Soules made the
7 flights, the plane was leased to Club member Brent Shelley. In response to the Commission's
8 findings, Soules admitted that she flew by non-commercial aircraft for campaign-related travel
9 and requested pre-probable cause conciliation.⁴ Soules explained that, at the time she accepted
10 the flights, she was unaware that Commission regulations prohibited House candidates from
11 accepting in-kind contributions of non-commercial travel.⁵ She also stated that she did not
12 intend to run for federal office again, but if she did, she would comply with the prohibition.⁶
13 Soules provided the Commission with an itinerary for the travel, a copy of an account statement
14 Shelley received from the Club reflecting invoices for his use of the airplane, and copies of
15 emails between Soules and Shelley discussing the flights and payments.

³ See Aero Newton Resp. (Feb. 27, 2017); see also CESSNA 1965 182H SKYLINE - PLANE & PILOT MAGAZINE, <http://www.planeandpilotmag.com/article/cessna-1965-182h-skyline> (last visited Aug. 10, 2017).

⁴ Letter from Merrie Lee Soules to Ray L. Wolcott, Attorney, FEC (May 21, 2018) ("May 21 Soules Letter").

⁵ May 21 Soules Letter at 1.

⁶ *Id.*

1 The campaign-related flights took place on November 7-8, 2016, and included an initial
2 prepositioning flight on November 7 from Las Cruces, New Mexico, to El Paso, Texas, and a
3 series of flights within New Mexico on November 8, 2016.⁷ The complete itinerary was:

- 4 1. Las Cruces, NM to El Paso, TX
- 5 2. El Paso, TX to Hobbs, NM
- 6 3. Hobbs, NM to Carlsbad, NM
- 7 4. Carlsbad, NM to Roswell, NM
- 8 5. Roswell, NM to Belen, NM
- 9 6. Belen, NM to Grants, NM
- 10 7. Grants, NM to Socorro, NM
- 11 8. Socorro, NM to Silver City, NM
- 12 9. Silver City, NM to Las Cruces, NM

13 In addition to the pilot, Shelley, a campaign staffer, Lawrence Hittle, traveled on the plane both
14 days, and Soules and her daughter, Leslie Peterson, used the plane to attend campaign events and
15 meet with voters in each city on November 8.⁸

16 Using the itinerary provided by Soules, we were able to calculate estimated flight times
17 and distances for each leg of travel with an online flight planning tool called SkyVector.⁹ By
18 entering the tail number of the Cessna Model 182H used for the flights, along with the departure
19 and destination information, we were able to generate distances between airports and calculate
20 the approximate flight time based on the aircraft's average cruising airspeed. As detailed below,
21 we estimate that the total flight time was 7.27 hours, including the initial prepositioning flight.

⁷ Letter from Merrie Lee Soules to the Commission (June 19, 2018) ("June 19 Soules Letter").

⁸ *Id.*

⁹ See Report of Investigation of Soules for US Congress at 1, 7-16 (Aug. 6, 2018) ("Soules ROI"); <https://skyvector.com>.

Leg	Distance (nautical miles)	Flight Time (hours)
Las Cruces to El Paso	40.1	0.42
El Paso to Hobbs	169.2	1.31
Hobbs to Carlsbad	57.1	0.58
Carlsbad to Roswell	59.2	0.53
Roswell to Belen	140.5	1.35
Belen to Grants	61.2	0.60
Grants to Socorro	84.6	0.75
Socorro to Silver City	104.2	1.10
Silver City to Las Cruces	66	0.63
Total		7.27

1 To determine the value of the 7.27 hours of the flight time Shelley provided to Soules and
 2 the Committee, we looked for commercial air carriers operating in New Mexico that advertise
 3 charter rates for flights in similar aircraft. Although we were not able to find charter companies
 4 in New Mexico that advertised the same type of aircraft, we did find carriers in other regions that
 5 advertised rental and charter rates for this particular aircraft, which ranged from \$169-\$375 per
 6 hour.¹⁰ Based on the estimated 7.27 hours of flight time, we estimate the cost of comparable
 7 charter flights to fall in the range of \$1,228.63 to \$2,726.25.¹¹ This estimate differs from the
 8 \$750 that Shelley advised Soules to report as the value of his in-kind contribution and from the
 9 \$981.34 value that the Club listed on its invoice to Shelley for the use of the plane.¹²

¹⁰ See Soules ROI at 1, 4-6; CHARTER HUB CESSNA 182 SKYLINE FOR CHARTER, <http://www.charterhub.com/listings/airplane/for-charter/1411595/cessna-182-skyline> (last visited June 28, 2017) (\$300/hour); CESSNA-PISTON SINGLE CHARTER AIRPLANE, <http://www.aircharterguide.com/AirplaneSearch.aspx?AirplaneMake=CESSNA&AirplaneCategory=Piston-Single&AirplaneModel=CE-182H> (last visited June 28, 2017) (\$375/hour); CHARTER – BAKER AIRPLANE, <http://bakerairplane.com/charter> (last visited June 28, 2017) (\$240/hour).

¹¹ There do not appear to have been any additional fees associated with parking the airplane overnight at the airport in Hobbs, NM. Soules ROI at 1.

¹² June 19 Soules Letter at 5. Shelley provided Soules with an account statement from the Club reflecting two invoices totaling \$981.34 which were due on Nov. 23, 2016. The statement bears handwritten notes by Shelley indicating that the entire \$981.34 invoiced on November 23, 2016, was “political.” The statement also reflects \$730.43 in outstanding invoices from the Club which Shelley indicated were “personal” and not associated with the flights in this matter. The Committee amended its reports on October 24, 2017, to report a \$750 in-kind contribution from Shelley. See Soules for US Congress Amended 2016 30-Day Post-General Rpt. at 36 (Oct. 24, 2017).

IV. DISCUSSION

The Honest Leadership and Open Government Act of 2007 ("HLOGA") amended the Federal Election Campaign Act of 1971, as amended (the "Act"), to prohibit House candidates from making any expenditure for non-commercial air travel.¹³ Commission regulations similarly prohibit House candidates from accepting in-kind contributions of non-commercial air travel.¹⁴ The prohibition on House candidates' non-commercial air travel applies to any "campaign traveler," which includes "any candidate traveling in connection with an election for Federal office or any individual traveling in connection with an election for Federal office on behalf of a candidate or political committee."¹⁵

Soules admits that she and the other passengers took the flights described above, they were "campaign travelers," and Shelley was not a commercial carrier or commercial operator "certificated by the Federal Aviation Administration."¹⁶ Thus, the investigation confirmed that Soules and the Committee violated 52 U.S.C. § 30114(c)(2) and 11 C.F.R. §§ 100.93(c)(2) and 113.5(b) by accepting prohibited campaign-related non-commercial air travel.

¹³ 52 U.S.C. § 30114(c)(2). Two exceptions to the prohibition exist — travel on government-operated aircraft and travel on aircraft owned or leased by the candidate — but neither exception applies here. *Id.* § 30114(c)(2)(B), (c)(3).

¹⁴ 11 C.F.R. §§ 100.93(c)(2), 113.5(b). Commercial travel is defined as travel aboard "an aircraft operated by an air carrier or commercial operator certificated by the Federal Aviation Administration, provided that the flight is required to be conducted under FAA air carrier safety rules" *Id.* § 100.93(a)(3)(iv)(A); *see also id.* § 100.93(a)(3)(v) (defining "non-commercial travel" as travel that is not commercial travel).

¹⁵ 11 C.F.R. § 100.93(a)(3)(i)(A).

¹⁶ *See* May 21 Soules Letter at 1; June 19 Soules Letter at 1; and Shelley Resp. (Feb. 28, 2017).

1 In-kind contributions associated with air travel are attributed to the "service provider,"¹⁷
2 which Commission regulations define as either the owner, lessor, or other individual who obtains
3 the legal right to use the aircraft.¹⁸ Here, although the airplane was initially leased to the Club,
4 the available information indicates that Shelley entered into an agreement with the Club to use
5 the airplane on November 7-8 when he provided the campaign-related flights.¹⁹ Therefore,
6 because the facts indicate that Shelley was the "service provider" for the flights, the resulting in-
7 kind contributions are appropriately attributable to him.²⁰

8 Since the estimated value of the in-kind contribution is, at most, barely more than the
9 \$2,700 individual contribution limit for the 2016 cycle, and Shelley did not make any other
10 contributions to the Committee, Shelley's provision of air travel most likely did not result in an
11 excessive contribution to the Committee.²¹

12 Regardless of whether Shelley made an excessive contribution, Soules and the
13 Committee violated the Act by accepting the non-commercial air travel and by failing to properly

¹⁷ See 11 C.F.R. § 113.5(d).

¹⁸ See *id.* § 100.93(a)(3)(ii); see also MUR 6421 (Benishek for Congress). But see Advisory Op. 1978-20 (Davis) (a pre-HLOGA advisory opinion advising that a prohibited corporate contribution would not result where an individual member of an incorporated, non-profit flight club used the club's plane as a volunteer to transport campaign personnel if either the member or the campaign reimbursed the club in advance).

¹⁹ See 11 C.F.R. § 100.93(a)(3)(ii) (defining "service provider" as "the owner of an aircraft or other conveyance, or a person who leases an aircraft or other conveyance from the owner or otherwise obtains a legal right to the use of an aircraft or other conveyance, and who uses the aircraft or other conveyance to provide transportation to a campaign traveler").

²⁰ See *id.* § 113.5(d).

²¹ 52 U.S.C. § 30116(a)(1)(A). A contribution "includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office." *Id.* § 30101(8)(a)(i).

1 report it.²² Nevertheless, we recommend that the Commission take no further action as to Soules
2 and the Committee in connection with this travel.

3 Although there is a strict prohibition on House candidates accepting non-commercial air
4 travel, in a previous case involving a slightly larger amount in violation (\$3,213), the
5 Commission voted to take no further action except to send letters of caution, and we recommend
6 the Commission do likewise here.²³ In addition, the Committee is seeking to terminate, has no
7 cash on hand, and did not repay Soules for the loans she made to the Committee.²⁴

8 Given these specific circumstances, we do not believe that this matter justifies the use of
9 additional Commission resources. Therefore, we recommend that the Commission take no
10 further action in this matter other than to send letters of caution to Soules and the Committee and
11 close the file as to all Respondents.

12 V. RECOMMENDATIONS

- 13 1. Take no further action as to Merrie Lee Soules and Soules for US Congress and Laura
14 Garcia in her official capacity as treasurer except to send letters of caution;
- 15 2. Approve the appropriate letters; and

²² Although Shelley told Soules following the flight that he expected it would cost \$750, the contribution was not disclosed on the Committee's original report for the period. *See* June 19 Soules Letter at 2. After being notified of the Complaint, the Committee filed an amended 2016 30-Day Post-General Report disclosing a \$750 in-kind contribution from Shelley for "plane expenses." *See* Soules for US Congress Amended 2016 30-Day Post-General Rpt. at 36 (Oct. 24, 2017); May 21 Soules Letter at 2; June 19 Soules Letter at 2. Although this disclosed value differs from the \$981.34 invoice reflected on the Club account summary Shelley later provided to Soules and the Committee during the course of the investigation, the difference is minimal.


²³ *See* Second General Counsel's Rpt. at 8-9, Certification at 2 (Feb. 5, 2013), MUR 6421 (Benishek for Congress) (Taking no further action regarding flights valued at \$3,213, other than cautioning respondents).

²⁴ *See* Soules for US Congress Misc. Report (Jan. 8, 2018) (indicating that Soules is no longer a candidate, is seeking to terminate, and plans to forgive \$231,479.02 in personal loans to the Committee); Commission Response to Debt Settlement Request (Jan. 15, 2018) (accepting Soules's debt settlement plan); Soules for US Congress 2018 July Quarterly Rpt. at 8-9 (July 10, 2018) (reporting a no cash on hand and outstanding debts of \$227,186.43). Although Benishek reimbursed the corporation which provided the flight in MUR 6241 and Soules and her committee did not reimburse Shelley for his individual in-kind contribution, these other financial factors support taking no further action here.

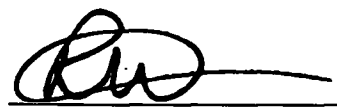
3. Close the file as to all Respondents.

Lisa J. Stevenson
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2.19.19
Date


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